

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**COLOPLAST A/S,**

Plaintiff,

V.

**MPATHY MEDICAL DEVICES, INC.,**

Defendant.

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Civil Action No. \_\_\_\_\_

## COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Coloplast A/S alleges against Defendant Mpathy Medical Devices, Inc. as follows:

## PARTIES

1. Plaintiff Coloplast A/S (“Coloplast”) is a Danish corporation headquartered in Humlebaek, Denmark. Coloplast has a subsidiary, Coloplast Corp., which operates in the United States and is headquartered in Minneapolis, Minnesota.

2. Defendant Mpathy Medical Devices, Inc. (“Mpathy”), on information and belief, is a corporation organized and existing under the laws of Delaware, with its principal place of business in the United States at 175 Paramount Drive, Raynham, Massachusetts, 02767.

## **JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Mpathy because, on information and belief, Mpathy transacts business and has continuous and systematic contacts in this district, maintains an ongoing presence within this district, and has purposefully availed itself of the privileges and benefits of the laws of the Commonwealth of Massachusetts.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

### **PATENTS-IN-SUIT**

7. On October 28, 2003, United States Patent No. 6,638,211 (“the ’211 patent”), entitled “Method for Treating Urinary Incontinence in Women and Implantable Device Intended to Correct Urinary Incontinence,” was duly and legally issued by the United States Patent and Trademark Office. Coloplast was assigned and continues to hold all rights, title and interest in the ’211 patent. A true and correct copy of the ’211 patent is attached as Exhibit A to this Complaint.

8. On November 24, 2009, United States Patent No. 7,621,864 (“the ’864 patent”), entitled “Method for Treating Urinary Incontinence in Women and Implantable Device Intended to Correct Urinary Incontinence,” was duly and legally issued by the United States Patent and Trademark Office. Coloplast was assigned and continues to hold all rights, title and interest in the ’864 patent. A true and correct copy of the ’864 patent is attached as Exhibit B to this Complaint.

### **FIRST CAUSE OF ACTION INFRINGEMENT OF U.S. PATENT NO. 6,638,211**

9. Coloplast realleges and incorporates by reference paragraphs 1 through 8 as if fully stated herein.

10. Mpathy, on information and belief, markets female urinary incontinence slings and related surgical needles that are used by medical professionals in practicing a transobturator surgical technique (“Mpathy products”) covered by one or more claims of the ’211 patent. The Mpathy products include its Minitape and Omnisure products.

11. Mpathy, on information and belief, has knowledge of the ’211 patent and, in marketing and selling its Mpathy products, encourages and/or instructs third parties, including medical professionals, to use Mpathy products in a manner that infringes at least one claim of the ’211 patent. Mpathy’s acts of encouragement and instruction to third parties include, for example, the following statement on Mpathy’s website:

#### Surgical Procedure

Create a 2 centimeter incision over the urethra and develop a paraurethral tunnel bilaterally. Pass the IntroHook Slim needle using a “out-in” approach over the medial margin of the obturator foramen and behind the pubic ramus. Load the Omnisure™ into the needle and pass through the transobturator tunnel bilaterally. No formal incisions are required at the skin sites. The sling should lie flat under the urethra which is achieved by appropriate symmetrical traction on the SmartFix™ strands. Once the strands are in the optimal location, cut the ends below the epidermal line to secure within the subcutaneous layer.

(Source: <http://www.mpathymedical.com/foundations/store/storepage.asp?page=omnisure>  
(last visited Feb. 8, 2010).)

12. Accordingly, Mpathy, on information and belief, has infringed and is infringing the ’211 patent in violation of 35 U.S.C. § 271 by using Mpathy products with a transobturator surgical technique, actively inducing medical professionals to use Mpathy products with a transobturator technique, and/or contributing to the surgical use of Mpathy products with a transobturator technique.

13. Mpathy’s acts of infringement have caused and continue to cause damage to Coloplast, and Coloplast is entitled to recover from Mpathy the damages sustained by Coloplast

in an amount subject to proof at trial. Mpathy's acts of infringement will irreparably injure Coloplast unless and until such infringing activities are enjoined by this Court.

**SECOND CAUSE OF ACTION**  
**INFRINGEMENT OF U.S. PATENT NO. 7,621,864**

14. Coloplast realleges and incorporates by reference paragraphs 1 through 13 as if fully stated herein.

15. Mpathy, on information and belief, has knowledge of the '864 patent and, in marketing and selling its Mpathy products, encourages and instructs third parties, including medical professionals, to use Mpathy products in a manner that infringes at least one claim of the '864 patent. Mpathy's acts of encouragement and instruction to third parties include, for example, the statement from Mpathy's website that is reproduced above in paragraph 11.

16. Accordingly, Mpathy, on information and belief, has infringed and is infringing the '864 patent in violation of 35 U.S.C. § 271 by using Mpathy products with a transobturator surgical technique, actively inducing medical professionals to use Mpathy products with a transobturator surgical technique, and/or contributing to the surgical use of Mpathy products with a transobturator technique.

17. Mpathy's acts of infringement have caused and continue to cause damage to Coloplast, and Coloplast is entitled to recover from Mpathy the damages sustained by Coloplast in an amount subject to proof at trial. Mpathy's acts of infringement will irreparably injure Coloplast unless and until such infringing activities are enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Coloplast respectfully requests this Court:

- A. To enter judgment that Mpathy has infringed the '211 and '864 patents in violation of 35 U.S.C. § 271;
- B. To enter orders preliminarily and permanently enjoining Mpathy and its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with any of the foregoing, who receive actual notice by personal service or otherwise of the orders, from infringing the '211 and '864 patents in violation of 35 U.S.C. § 271;
- C. To award Coloplast its damages in amounts sufficient to compensate it for Mpathy's infringement of the '211 and '864 patents, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
- D. To declare this case to be "exceptional" under 35 U.S.C. § 285 and to award Coloplast its attorneys' fees, expenses, and costs incurred in this action; and
- E. To award Coloplast such other and further relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Coloplast respectfully requests a trial by jury of any and all issues on which a jury trial is available under applicable law.

Dated: February 8, 2010

/s/ Anthony J. Fitzpatrick

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